83-1637

Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS,
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

WILLIE L. DRAPER,

Petitioner,

vs.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 387, JESSE GREGORY; FORD MOTOR CO., WOODHAVEN STAMPING PLANT; AND FRANK DOYLE

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES SUPREME COURT
FROM THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WILLIE L. DRAPER
P.O. BOX 15540
DETROIT, MICHIGAN 48215
TELEPHONE: (313) 933-6953

QUESTIONS PRESENTED FOR REVIEW

Was the granting of summary judgment based on laches, statute of limitations, lawful, where, time a material issue of fact, disputed less than three in issue Appendixes A and B.

Further, was it "constructive contempt" by non-compliance with court's subpeona, what is fair procedure?

Is it "denial" of a meaningful opportunity to be heard to grant motion not in procedural compliance with rules and thereby effecting a substantial right VII Amendment to the United States Constitution?

Was substantial justice rendered where affidavits were made in bad faith, no discovery or cross examination of parties making affidavits and Court asserting good faith of union?

Was the acts of the Respondent union (conspiracy) a breach of duty of fair representation?

Is continuing racial discrimination against minorities (blacks) a breach of contract by Respondents and is there remedy under Title VII of the 1964 Civil Rights Act?

What is the requirements of the settled principle of "due process"? Note United States Court of Appeal Opinion (1978); and Appendixes E and B.

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IN THE
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UNITED AUTOMOBILE AEROSPACE AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 387, JESSE GREGORY; FORD MOTOR COMPANY, WOODHAVEN STAMPING PLANT AND FRANK DOYLE

Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES SUPREME COURT

The Petitioner, WILLIE L. DRAPER, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered on 12 December 1983.

QUESTIONS PRESENTED

Was the granting of summary judgment based on laches, statute of limitations, lawful, where, time a material issue of fact, disputed less than three in issue Appendixes A and B.

Further, was it "constructive contempt" by non-compliance with court's subpeona, what is fair procedure?

Is it "denial" of a meaningful opportunity to be heard to grant motion not in procedural compliance with rules and thereby effecting a substantial right VII Amendment to the United States Constitution?

Was substantial justice rendered where affidavits were made in bad faith, no discovery or cross examination of parties making affidavits and Court asserting good faith of union?

Was the acts of the Respondent union (conspiracy) a breach of duty of fair representation?

Is continuing racial discrimination against minorities (blacks) a breach of contract by Respondents and is there remedy under Title VII of the 1964 Civil Rights Act?

What is the requirements of the settled principle of "due process"? Note United States Court of Appeal Opinion (1978); and Appendixes E and B.

OPINION BELOW

The Court of Appeals entered its Memorandum decision affirming the Summary Judgment granted the respondent by the Honorable Judge Ralph B. Guy in the United States District Court, Eastern District of Michigan, Southern Division; and denying petitioner motion for Injunctive Relief copies herewith attached.

JURISDICTION

On 12 December 1983, the Court of Appeals entered judgment affirming the

Summary Judgment on behalf of the respondents granted in the District Court. The jurisdiction of this court is invoked under Title 28, United States Code, Section 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitutional Amendments VII, XIII, XIV.

STATEMENT OF THE CASE

An appeal of the Summary Judgment based on the doctrine of laches. Plaintiff-Appellant alleges racial discrimination by the Defendants-Appellees his Union (UAW) and Employer, Ford Motor Company in violation of Title VII of Civil Rights Acts of 1964 as amended by the Equal Employment Opportunity Act of 1972, 42 U.S.C. 20003, 29 U.S.C. 401 Section 610, 29 U.S.C. 401 Section 2, 29 U.S.C.A. 411, 29 U.S.C.A. 412, 29 U.S.C.A. 185, 42 U.S.C. Section 1985, 42 U.S.C. Section 1983, Zamora v.

Massey-Ferguson, 336 F.Supp. 588 (1972), Patrick v. I.D. Packing Company, Inc., 308 F.Supp. 821 (1969), Lummus v. N.L.R.B., 339 F.2d 728 (1964) and Vica v. Sipes, 386 U.S. 172 (1966).

REASON FOR GRANTING THE WRIT

Petitioner filed the timely complaint on 4/12/74. The complaint was within the filing dates required by the statute. The E.E.O.C. failed to mail the Right To Sue letter until requested by the Appellant-Petitioner in 1982.

This case has been in the Federal Court and State Courts until 8/31/79.

Dismissed 8/31/79 and refiled under Title VII 4/19/82.

Petitioner served the Respondents with Subpeonas to appear on December 2, 1982. Respondents failed to appear as ordered by subpoena. For oral deposition petitioner relies on Equal Employment Opportunity Commission v. Mississippi

College cite as 626 F.2d 477 (1980). EEOC sought enforcement of a subpoena issued in connection with its investigation of a charge of discrimination filed against a college owned, controlled and operated by a religious institution. The United States District Court for the Southern District of Mississippi, William Harold Cox, J., 451 F. Supp. 564, denied enforcement, and EEOC appealed. The Court of Appeals, Charles Clark, Circuit Judge, held that: (1) white female could not charge college with discriminating against blacks without establishing that she could satisfy standing requirements of Article III to bring court action against it under Title VII; (2) Title VII had no application to employment practices of religious educational institution that discriminated on basis of religion regardless of whether religious discrimination was pretext for

some other type of discrimination; (3) relationship between religious educational institution and its faculty was not exempt from coverage of Title VII; and (4) application of Title VII to college violated neither the establishment clause nor the free exercise clause of the First Amendment. 626 F.2d 482 Rogers v. EEOC, 454 F.2d 234 (5th Cir. 1971), cert. denied, 406 U.S. 957, 92 S. Ct. 2058, 32 L.Ed. 2d 343 (1972), Judge Goldberg, without the concurrence of either of the two other panel members, concluded that an employee could charge her employer under Section 703 with discrimination that, although not directed towards her, had the effect of creating a "working environment heavily charged with discrimination. Judge Goldberg observed that Section 703(a)(1) of Title VII prohibits discrimination with respect to "compensation, terms, conditions or privileges of employment" and reasoned

that Congress intended to encompass within Title VII subtle discriminatory practices that, while not directed toward the charging employee, affected the employee by creating a working environment "polluted" with discrimination. Id. at 237-39.

CONCLUSION

To summarize our holdings, we conclude that (1) Summers cannot charge the College with discriminating against blacks without establishing that she could satisfy the standing requirements of Article III of the Constitution to bring a court action against it under Title VII; (2) Section 702 of Title VII, excludes from the application of the Act any employment practices of a religious educational institution that discriminate on the basis of religion regardless of whether the religious discrimination is a pretext for some other type of discrimination; (3) McClure v. Salvation Army,

exempts from the coverage of Title VII only the relationship between a church and its minister and does not apply to the relationship between a religious educational institution and its faculty; and (4) the application of Title VII to the College violates neither the establishment clause of the free exercise clause of the First Amendment. We vacate the district court's findings of fact, its conclusions of law, and its initial opinion and remand for further proceedings consistent with this opinion. We specifically note that on remand the district court should determine whether Summers' charge of race discrimination was timely filed and should allow the parties to present further evidence demonstrating which employment practices of Mississippi College are exempt from the coverage of Title VII under Section 702 as construed by this opinion. We leave for resolution by the district court on remand the question

of what portions of the EEOC's subpoena should be enforced. 329 U.S. 495 Hickman v. Taylor, as a device for ascertaining the facts, or information as to the existence or whereabouts of facts, relative to those issues. Thus, civil trials in the federal courts no longer need be carried on in the dark. The way is now clear, consistent with recognized privileges, for the parties to obtain the fullest possible knowledge of the issues and facts before trial.

For the foregoing reasons, petitioner Willie L. Draper respectfully requests that a writ of certorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

Willie L. Draper
WILLIE L. DRAPER

P.O. Box 15540
Detroit, Michigan 48215
Telephone: (313) 933-6953

DATED: 2 April, 1984.

APPENDIX A

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

OPERATION P.U.S.H: METROPOLITAN DETROIT (PEOPLE UNITED TO SAVE HUMANITY) AN UNINCORPORATED ASSOCIATION,

and

WILLIE DRAPER, JAMES ELLISON, DELLA HILL, DAVE JEMISON, LEROY KELKER, CHARLES McWILLIAMS, LEON POLITE, JEROME RANDALL AND BIRK WALKER, ON BEHALF OF THEMSELVES AND ON BEHALF OF THE CLASS OF PERSONS SIMILARLY SITUATED,

Plaintiffs,

vs.

FORD MOTOR CO. (WOODHAVEN STAMPING PLANT), A DELAWARE CORPORATION,

and

INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW), LOCAL 387, AN UNINCORPORATED VOLUNTARY ASSOCIATION,

Defendants.

Wayne County Circuit Court
Civ. Act. No. 77-705367

U.S. Dist. Court
Civ. Act. No. 77-70620

Filed James Kilgen
Wayne County Clerk, Mar. 15, 1977
Frank G. Curry

Butzel, Long, Gust, Klein & VanZile
by: John B. Weaver (P22061)
and: Donald B. Miller (P23417)
1881 First National Building
Detroit, Michigan 48226
(313) 963-8142

Attorneys for Defendant
Ford Motor Company

NOTICE OF FILING Joinder of Defendant Ford Motor Company in removal petition of Defendant, International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) Local 387.

APPENDIX B

FILE WITH ASSIGNMENT CLERK ONLY

Praecipe For Motion and Order/Judgement

WILLIE DRAPER, et al, Plaintiffs,	The Circuit Court for the County of Wayne, State of Michigan
vs.	
FORD MOTOR COMPANY AND INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), LOCAL 387, Defendants.	Civil Action No. 77-705 367 CZ

TO THE ASSIGNMENT CLERK: Please place Defendant Ford Motor Company's renewed Motion to Dismiss For Failure to Prosecute on the motion calendar for (Date) Friday, August 31, 1979 at 2:00 p.m. This motion is to be heard by Judge John D. O'Hair

TO COURT CLERK: Have the following Order/ Judgment completed and signed by Judge and check 1 or 2 below, whichever is applicable

ORDER/JUDGMENT

Dated: August 31, 1979

/ / 1. IT IS HEREBY ORDERED that the aforesaid motion be and the same is hereby denied

/X/ 2. IT IS HEREBY ORDERED that the aforesaid motion be and the same is hereby granted, AND IT IS FURTHER ORDERED AND ADJUDGED Dismissal without prejudice

Filed James R. Killeen, Wayne County Clerk

August 31, 1979. Circuit Judge John D. O'Hair

Approved as to Form and Substance
By Counsel for Donald B. Miller
Defendant's Attorney

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIE L. DRAPER,

Plaintiff,

vs.

Civil Action No.
82-71392

UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 387, JESSE GREGORY; FORD MOTOR COMPANY, WOODHAVEN STAMPING PLANT; AND FRANK DOYLE,

Defendants.

ORDER GRANTING DEFENDANT'S
MOTIONS FOR SUMMARY JUDGMENT

This matter is before the court on Defendant's Motions For Summary Judgment. The Court has reviewed the motion and briefs filed in support thereof and in opposition thereto and, in accordance with the bench opinion rendered following oral arguments of the parties on December 22, 1982;

IT IS ORDERED that Defendants' Motion for Summary Judgment are hereby granted.

RALPH B. GUY, JR.
United States District Judge

DATED: Dec. 27, 1982. By: Mary A. Evers

APPENDIX E

NO. 83-1067

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED: December 12, 1983
John P. Hetlman, Clerk

WILLIE L. DRAPER,

Plaintiff-Appellant,

vs.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 387, JESSE GREGORY; FORD MOTOR COMPANY, WOODHAVEN STAMPING PLANT; AND FRANK DOYLE,

Defendant-Appellees.

BEFORE: LIVELY, Chief Judge; JONES, Circuit Judge; and CELEBREZZE, Senior Circuit Judge

This pro se plaintiff requests the Court to issue an injunction ordering several union officials to cease and desist their harassment and discriminatory actions directed against the plaintiff. The plaintiff, an employee of the Ford Motor Company, is appealing from a summary judgment awarded in the defendants' behalves after

hearing was conducted before Judge Guy on plaintiff's amended complaint filed under 42 U.S.C. §§1981, 1983 and 1985(3); 29 U.S.C. §185; 29 U.S.C. §§ 401, 411, 412 and 530, and Title VII.

The plaintiff raised many allegations in his amended complaint which was in excess of one hundred paragraphs relating to his employment with Ford and his relationship with the union between the years 1974 and 1978. He primarily complained that he was not given a fair amount of overtime work which he was entitled to while he was an elected committeeman in 1974. Plaintiff also claimed that a union committeeman assaulted him in March of 1974 when he complained about the lack of overtime work. Plaintiff raised many other charges relating to wrongful disciplinary measures, denial of promotions, the theft of his car, denial of free speech at union meetings, distribution of defamatory literature, improper assignments of work, improperly held

elections and denial of counsel at grievance hearings.

Upon a careful review of the district court record, especially of the transcript of the hearing conducted on the defendants' motions for summary judgment, this Court concludes that the district court properly entered summary judgment for the defendants as there is ample support for the entry of the judgment in their favor even while the Court construes the evidence in a light favorable to this pro se plaintiff. Bouldis v. U.S. Suzuki Motor Corp., 711 F.2d 1319, 1324 (6th Cir. 1983); Smith v. Pan Am World Airways, 706 F.2d 771, 773 (6th Cir. 1983) (Per Curiam). The Plaintiff's §1983 claim was properly denied because he utterly failed to show that the defendants acted under color of state law. Coffy v. Multi-County Narcotics Bureau, 600 F.2d 570, 579 (6th Cir. 1979). His §1985(3) claim was also properly dismissed as allegations

supporting a §1985(3) claim of employment discrimination may only be considered under Title VII. Great American Fed. S. & L. Assn. v. Novotny, 442 U.S. 366 (1979). Plaintiff's claims as brought under 29 U.S.C. §185 and 42 U.S.C. §1981 were also dismissed for being time-barred under the applicable statute of limitations. Regardless of whether the six month time limitation contained in the NLRA or the three year time limitations applicable under Michigan state law is applied in this case, the plaintiff's §185 claim is time-barred; and his §1981 claim is absolutely time-barred under the three year statute of limitations which has been held to govern the timeliness of civil rights complaints. Geromette v. General Motors Corp., 609 F.2d 1200, 1201 (6th Cir. 1979). The plaintiff was also required to exhaust his internal union remedies before asserting his claims under the Labor Management Reporting and

Disclosure Procedure Act, 29 U.S.C. §401. See 29 U.S.C. §411(a)(4); Stelling v. IBEW, Local 1547, 587 F.2d 1379, 1389-1390 (9th Cir. 1978), cert. denied, 442 U.S. 944 (1979). Finally, the district court also reasonably and cautiously applied the doctrine of laches to bar plaintiff's Title VII claims in this case. The court properly considered unavailability of witnesses, changed personnel, and loss of pertinent records in its determination that the defendants would suffer undue prejudice if plaintiff were allowed to pursue his Title VII claims. Abermarle Paper Co. v. Moody, 422 U.S. 405 (1975); EEOC v. Dresser Industries, Inc., 668 F.2d 1199 (11th Cir. 1982). The court also did not abuse its discretion in restricting plaintiff's discovery until after it could rule on the defendants' summary judgment motions.

For these reasons, this panel unanimously agrees that oral argument is not necessary

in this appeal. Rule 34(a), Federal Rules of Appellate Procedure. The plaintiff's motion is, accordingly, denied and the district court's judgment is hereby affirmed pursuant to Rule9(d)3, Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

_____

Clerk

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MAY 9 1984
ALEXANDER L. STEVAS
CLERK

No. 83-1637

IN THE

Supreme Court of the United States

October Term, 1983

WILLIE L. DRAPER,

Petitioner,

v.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL WORKERS OF AMERICA, LOCAL 387, JESSE GREGORY, FORD MOTOR COMPANY, WOODHAVEN STAMPING PLANT, AND FRANK DOYLE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION OF UAW LOCAL 387 AND JESSE GREGORY

MILLER, COHEN, MARTENS & SUGERMAN, P.C.
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COUNTERSTATEMENT OF QUESTIONS PRESENTED

I.

WERE PETITIONER'S CLAIMS UNDER 42 U.S.C. § 1981 AND 29 U.S.C. § 185 TIME BARRED WHERE THE COMPLAINT WAS FILED MORE THAN THREE YEARS AFTER THE ALLEGED UNDERLYING EVENTS OCCURRED?

II.

HAD PETITIONER STATED A CLAIM UNDER 42 U.S.C. § 1983 WHERE THERE WAS NO ACTION ALLEGED TO HAVE BEEN TAKEN UNDER COLOR OF STATE LAW?

III.

WERE PETITIONER'S CLAIMS UNDER 29 U.S.C. § 185 AND 29 U.S.C. § 401 *ET SEQ.* PROPERLY DISMISSED WHERE PETITIONER HAD NOT EXHAUSTED INTERNAL UNION REMEDIES?

IV.

WAS PETITIONER'S CLAIM UNDER 42 U.S.C. § 1985(3) PROPERLY DISMISSED WHERE HE HAD MADE AN IDENTICAL CLAIM UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C. § 2000e *ET SEQ.*?

V.

WAS PETITIONER'S CLAIM UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C. § 2000e *ET SEQ.* PROPERLY DISMISSED WHERE THE CASE WAS NOT BROUGHT UNTIL OVER EIGHT YEARS AFTER THE FILING OF THE EEOC CHARGE, WHERE IN THE INTERIM CRITICAL WITNESSES HAD DIED, OTHERS HAD DISAPPEARED, RECORDS HAD BEEN DESTROYED, THE LOSS OF EVIDENCE WOULD HAVE PREJUDICED RESPONDENTS AND WHERE PETITIONER OFFERED NO JUSTIFICATION FOR HIS DELAY?

VI.

DID THE DISTRICT COURT ABUSE ITS DISCRETION IN STAYING DISCOVERY UNTIL AFTER RULING ON RESPONDENTS' MOTIONS FOR SUMMARY JUDGMENT?

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Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION OF UAW LOCAL 387 AND JESSE GREGORY

United Automobile, Aerospace and Agricultural Workers of America, Local 387 and Jesse Gregory respectfully pray that the Court deny the Petition for a Writ of Certiorari.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit was not recommended for full text publication. The opinion is set forth in Appendix E to the Petition for Writ of Certiorari. The opinion of the District Court granting the motions for summary judgment and dismissing Petitioner's complaint was issued from the bench and is not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on December 12, 1983. The jurisdiction of this Court is invoked by Petitioner under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The statutes involved are the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1985(3); Civil Rights Act of 1964, Title VII, 42 U.S.C. § 2000e *et seq.*; Labor Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. § 401 *et seq.*; National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.*

The complaint made no claims pursuant to the Seventh and Fourteenth Amendments of the United States Constitution and Petitioner did not appeal to the Court below the District Court's dismissal of his claims under the Thirteenth Amendment and the Civil Rights Act of 1866, 42 U.S.C. § 1981.

STATEMENT OF THE CASE

Petitioner Willie L. Draper started this case with a complaint filed on April 19, 1982. That complaint, as subsequently amended, described approximately nineteen events which allegedly occurred in the course of Petitioner's employment with Respondent Ford Motor Company and his membership in Respondent UAW Local 387. The topics discussed consisted of an alleged inequity in overtime assignments, assault, denial of a right to speak, a car theft, violation of Roberts Rules of Order, defamatory comments, missing newspapers, luncheon breaks, harassment by fellow employees, assignments, representation, campaign literature and promotions.

Virtually all of what Petitioner brought to the District Court had been previously raised in several other forums. The same claims had been the subject of an EEOC charge filed on April 12, 1974, two 1974 NLRB charges and a lawsuit filed in 1977 in the Michigan Circuit Court for the County of Wayne. The EEOC charge was disposed of with a Notice of Right to Sue issued on February 28, 1977. (Upon Petitioner's subsequent representation that he had not received the 1977 Notice, the EEOC issued a second Notice in January, 1982). The NLRB charges were dismissed in 1974 and related appeals were denied in 1975. The state litigation was dismissed for lack of prosecution in 1979. Petitioner also initiated an internal appeal with the International Union, UAW in 1974, but let it lapse.

After filing this case in April, 1982, Petitioner was permitted to amend his complaint, which he did in October, 1982. On November 29, 1982, after repeated requests that Petitioner postpone his recently noticed

depositions until after a hearing on Respondents' motions for summary judgment, Respondents jointly moved for a protective order. The District Court then stayed discovery until after the summary judgment hearing.

Following briefing and argument the District Court granted Respondents' motions for summary judgment and dismissed the complaint on grounds of failure to state a claim, statute of limitations, failure to exhaust internal union remedies, and laches. Petitioner appealed and on December 12, 1983 the United States Court of Appeals for the Sixth Circuit affirmed the trial court in a decision not recommended for publication. (A copy is attached to the Petition as Exhibit E.)

This Petition for a Writ of Certiorari followed. The first proof of service, not signed by a member of the Bar, indicates the Petition was mailed to the Court on March 9, 1984. Respondents UAW Local 387 and Jesse Gregory believe it was received by the Court on March 12, 1984, ninety-one days after the judgment of the Court below. Respondents are further informed that the March 12, 1984 Petition was rejected for deficiencies in form. On April 4, 1984 Petitioner mailed his second Petition for Writ of Certiorari which the Court has apparently docketed effective March 12, 1984. Respondents UAW Local 387 and Jesse Gregory received the second Petition on April 5, 1984.

SUMMARY OF ARGUMENT

Certiorari should be denied. The Petition is jurisdictionally out of time, is defective in form, seeks to appeal issues not raised below, and presents no special or important reasons why this case should be reviewed.

ARGUMENT

I.

THE PETITION IS UNTIMELY

28 U.S.C. § 2101(c) provides that a petition for writ of certiorari "intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree." Although filing may be deemed accomplished upon mailing, this is only true where a member of the Bar of the Supreme Court submits an affidavit stating that the mailing took place within the permitted time. Sup. Ct. R. 28.2.

This Petition does not meet these jurisdictional requirements. The decree below was entered on December 12, 1983. The ninety days in which to file a petition expired on March 11, 1984. This Petition was, on information and belief, not received by the Court until March 12, 1984. No affidavit conforming to Rule 28.2 has been filed. The proof of service mailed to Respondents was neither signed by a member of the Bar nor could it have certified the mailing of the Petition as it was apparently mailed together with the Petition. Under these circumstances the Petition is jurisdictionally out of time. Sup. Ct. R. 20.3.

II.

THE PETITION IS DEFECTIVE

Rule 21 of the Supreme Court Rules sets forth the requirements for a petition for certiorari. These include a short and concise statement of the questions presented

for review, a concise statement of the case, and a direct and concise argument amplifying the reasons relied on for allowance of the writ. The Petition satisfies none of these requirements.

Petitioner's statement of questions is unintelligible and refers to matters never before raised in this case. There is no factual statement of the case. The argument consists almost entirely of a three page verbatim quotation from an opinion in an unrelated case.

Given the clear requirements of Rule 21 and Petitioner's utter failure to meet them, this Petition should be dismissed.

III.

THE PETITION SEEKS REVIEW OF ISSUES NEVER RAISED BELOW

Among the issues Petitioner tenders, there are at least three that are raised for the first time in this Court. They are:

> [W]as it "constructive contempt" by non-compliance with court's subpeona (sic), what is fair procedure?
>
> Is it "denial" of a meaningful opportunity to be heard to grant motion not in procedural compliance with rules and thereby effecting a substantial right VII Amendment to the United States Constitution?
>
> Was substantial justice rendered where affidavits were made in bad faith, no discovery or cross examination of parties making affidavits and Court asserting good faith of union?

Certainly certiorari should be denied as to these questions. Barring exceptional circumstances, certiorari should not be granted to review issues not presented to the court(s) below. *Adickes* v. *Kress & Co.*, 398 U.S. 144, 147 n. 2 (1970) and cases cited therein. *Cf. Lawn* v. *United States*, 355 U.S. 339, 362-63 n. 16 (1958).

IV.

THE PETITION PRESENTS NO SPECIAL OR IMPORTANT REASONS FOR REVIEW

This Petition presents no special or important reasons for review of this case. Petitioner has pointed to no conflicts among the federal courts of appeal, no conflict between a federal decision and that of a state court of last resort. The Petition references no departure from the accepted and usual course of judicial proceedings or important question of federal law which has not been, but should be settled. Sup. Ct. R. 17.1.

Instead, this case presents straightforward decisions by both the District Court and the United States Court of Appeals for the Sixth Circuit in settled areas of the law.

Petitioner's claim asserted under 42 U.S.C. § 1981 was properly rejected as untimely. That claim was barred under the three year statute of limitations governing civil rights complaints brought in Michigan. *Geromette* v. *General Motors Corp.*, 609 F.2d 1200, 1201 (6th Cir. 1979). The duty of fair representation count was untimely under both the six months limitation period of Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b) and the three year statute previously applied in the Sixth Circuit, *Gallagher* v. *Chrysler Corp.*, 613 F.2d 167 (6th Cir. 1980), *cert. denied*, 449 U.S. 841 (1980).

The duty of fair representation claim was also properly dismissed where Petitioner had failed to exhaust his UAW internal union remedies. *Clayton* v. *Int'l Union, UAW*, 451 U.S. 679 (1981); *Monroe* v. *International Union, UAW*, __ F.2d __, 115 LRRM 2475 (6th Cir. 1983). The Landrum-Griffin counts were properly dismissed on the same ground. 29 U.S.C. § 411(a)(4) *Cf. Vestal* v. *Hoffa*, 451 F.2d 706 (6th Cir. 1971); *Stelling* v. *IBEW, Local 1547*, 587 F.2d 1379 (9th Cir. 1978), *cert. denied*, 442 U.S. 944 (1979).

As there was no allegation that any Respondent had acted under color of state law, the claim asserted under 42 U.S.C. § 1983 was properly dismissed. *Moose Lodge No. 7* v. *Irvis*, 407 U.S. 163 (1972); *Monroe* v. *Pape*, 365 U.S. 167 (1961).

The claim based on 42 U.S.C. § 1985(c) was also correctly dismissed. Section 1985(c) will not support a claim where the wrongful object of an alleged conspiracy is not unconstitutional and where the activity is subject to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq. Great American Federal Savings & Loan Assoc.* v. *Novotny*, 442 U.S. 366 (1979). Petitioner's Title VII claim was correctly rejected on grounds of laches. As indicated by the lengthy transcript of the hearing on the motion for summary judgment, the District Court did not lightly apply this bar. But after considering the death and disappearance of witnesses, changed personnel, the loss of records and documents, the long delay, prejudice to the Respondents and Petitioner's failure to offer any justification for his delay, the Court did correctly apply laches here. *Albemarle Paper Co.* v. *Moody*, 442 U.S. 405 (1975); *EEOC* v. *Dresser Industries, Inc.*, 668 F.2d 1199 (11th Cir. 1982).

Finally, the District Court was well within its discretion in staying Plaintiff's proposed discovery until after the hearing on Respondents' motions for summary judgment. Fed.R.Civ.P. 26(c)(d). Indeed, it is appropriate that preliminary issues relating to jurisdiction and legal defenses be decided before the parties embark on costly and unnecessary discovery. *Cf. Chemical and Industrial Corp.* v. *Druffel*, 301 F.2d 126 (6th Cir. 1962). Where a case can be resolved on legal issues and uncontroverted facts, justice is well served by a stay of discovery pending a decision on dispositive motions.

CONCLUSION

For the foregoing reasons, the Court should deny the Petition filed in this matter.

Respectfully submitted,

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No. 83-1637

In the Supreme Court of the United States

OCTOBER TERM, 1983

WILLIE L. DRAPER,
Petitioner,

v.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL WORKERS OF AMERICA, LOCAL 387, JESSE GREGORY, FORD MOTOR COMPANY, WOODHAVEN STAMPING PLANT, AND FRANK DOYLE,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF FORD MOTOR COMPANY AND FRANK DOYLE IN OPPOSITION

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. DID THE DISTRICT COURT ABUSE ITS DISCRETION IN STAYING DISCOVERY UNTIL AFTER A RULING ON DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT?
2. DID THE DISTRICT COURT ERR IN RULING THAT AS A MATTER OF LAW PLAINTIFF HAD FAILED TO STATE A CLAIM PURSUANT TO 42 U.S.C. §1983, 42 U.S.C. §1985 and 29 U.S.C. §185 FOR WHICH RELIEF COULD BE GRANTED?
3. DID THE DISTRICT COURT ERR IN RULING THAT AS A MATTER OF LAW PLAINTIFF'S CLAIMS UNDER 42 U.S.C. §1983, 42 U.S.C. §1985 and 29 U.S.C. §185 WERE TIME BARRED?
4. DID THE DISTRICT COURT ERR IN RULING THAT AS A MATTER OF LAW PLAINTIFF HAD FAILED TO MEET THE JURISDICTIONAL PREREQUISITE FOR BRINGING A TITLE VII ACTION AGAINST DEFENDANTS FORD MOTOR COMPANY AND FRANK DOYLE?
5. DID THE DISTRICT COURT ERR IN RULING THIS TITLE VII RACE DISCRIMINATION CLAIM WAS BARRED BY LACHES WHERE THE CASE WAS NOT BROUGHT UNTIL OVER EIGHT YEARS AFTER THE FILING OF EEOC CHARGES, THE DEATH AND DISAPPEARANCE OF WITNESSES AND THE DESTRUCTION OF AGENCY FILES OF THE UNDERLYING CHARGE?

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No. 83-1637

In the Supreme Court of the United States

OCTOBER TERM, 1983

WILLIE L. DRAPER,
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v.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL WORKERS OF AMERICA, LOCAL 387, JESSE GREGORY, FORD MOTOR COMPANY, WOODHAVEN STAMPING PLANT, AND FRANK DOYLE,
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BRIEF OF FORD MOTOR COMPANY AND FRANK DOYLE IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals was not recommended for full-text publication. The opinion is set forth in Appendix E to the Petition for Writ of Certiorari. The opinion of the district court granting the motions for summary judgment and dismissing Petitioner's complaint was not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on December 12, 1983. The jurisdiction of this Court is invoked by Petitioner under 28 U.S.C. §1254(1).

STATUTES INVOLVED

The statutory provisions involved are the Civil Rights Act of 1871, 42 U.S.C. §1983 and 1985; Civil Rights Act of 1964, Title VII, 42 U.S.C. §2000e, *et seq.*; Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. §401 *et seq.*, 29 U.S.C. §411(a)(4); National Labor Relations Act (NLRA), 29 U.S.C. §185. Although set forth in the Petition as involved in his appeal, Petitioner's complaint made no claims pursuant to the VII and XIV amendments of the United States Constitution and did not raise on appeal to the court below the district court's dismissal of his claims under the Thirteenth Amendment and 42 U.S.C. §1981.

STATEMENT OF THE CASE

Petitioner has been employed by Ford Motor Company since August 31, 1965. On April 12, 1974, Petitioner filed a charge with the Equal Employment Opportunity Commission ("EEOC") and the Michigan Department of Civil Rights ("MDCR") against UAW Local 387 alleging that the union had denied him proper representation in a dispute concerning overtime opportunities and in the treatment accorded him by union representatives, all because of his race. *No charge of discrimination was filed against Respondents Ford Motor Company and Frank Doyle with the EEOC or the MDCR.* The MDCR, after investigation, found no cause to believe that Petitioner had

been discriminated against and on January 18, 1977, dismissed Petitioner's charge. On February 15, 1977, the EEOC received the MDCR's disposition of Petitioner's charge and on February 28, 1977, the EEOC issued a no-cause determination and issued a right to sue letter.

In 1977, Petitioner, together with Operation P.U.S.H. and several other individuals, filed a class action in the Circuit Court for the County of Wayne, Michigan, alleging discrimination under state law. In an amended complaint filed on August 30, 1979, Petitioner and other individuals added claims under Title VII, 42 U.S.C. §2000e, and 42 U.S.C. §1981. That litigation was dismissed without prejudice on August 31, 1979 for lack of prosecution. No appeal was taken from that dismissal nor was the case re-filed.

On January 20, 1982, Petitioner requested and received a second right to sue letter from the EEOC. Petitioner filed the instant action in April of 1982, in the United States District Court, Eastern District of Michigan, Southern Division, alleging violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e; the Civil Rights Act of 1871, 42 U.S.C. §1983; 42 U.S.C. §1985; 42 U.S.C. §1981; Section 301 of the Labor Management Relations Act 29 U.S.C. §185; and violations of the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. §§401, 411, 412 and 530.

A status conference was held on September 28, 1982, wherein the lower court scheduled the dates for pre-trial discovery, final pre-trial order, and final pre-trial conference and additionally allowed Petitioner leave to file an Amended Complaint. On October 8, 1982, Petitioner filed his Amended Complaint. On October 27, 1982, Respondents UAW and Jesse Gregory answered Petitioner's Amended Complaint. On October 29, 1982 Petitioner filed a Subpoena Duces Tecum and Notice of Deposition. On November 4, 1982,

Respondents Ford and Frank Doyle answered Petitioner's Amended Complaint.

On November 29, 1982, Respondents filed a Motion for Protective Order seeking a stay of discovery until Defendants' motions for summary judgment were decided, since on the face of the complaint some or all of Petitioner's claims were legally barred. On December 1, 1982, Petitioner filed his objections to the Respondents' Motion for Protective Order. On December 2, 1982, the lower court granted Respondents' Motion for Protective Order and stayed discovery until December 21, 1982.

On December 6, 1982, Respondents filed their motions for summary judgment and the lower court set oral argument for December 22, 1982. Oral argument was held on December 22, 1982, before the Honorable Ralph B. Guy and an Order was entered on December 27, 1982, granting the Respondents' Motions for Summary Judgment.

Petitioner appealed the Order of Summary Judgment to the United States Court of Appeals for the Sixth Circuit. The Court of Appeals affirmed the district court's judgment on the grounds that:

> . . . there is ample support for the entry of the judgment in their favor even while the Court construes the evidence in a light favorable to this pro se plaintiff. *Bouldis v. U.S. Suzuki Motor Corp.*, 711 F.2d 1319, 1324 (6th Cir. 1983); *Smith v. Pan Am World Airways*, 706 F.2d 771, 773 (6th Cir. 1983) (Per Curiam). The plaintiff's §1983 claim was properly denied because he utterly failed to show that the defendants acted under color of state law. *Coffy v. Multi-County Narcotics Bureau*, 600 F.2d 570, 579 (6th Cir. 1979). His §1985(3) claim of employment discrimination may only be considered under Title VII. *Great American*

Fed. S. & L. Assn. v. Novotny, 442 U.S. 366 (1979). Plaintiff's claims as brought under 29 U.S.C. §185 and 42 U.S.C. §1981 were also dismissed for being time-barred under the applicable statute of limitations. Regardless of whether the six month time limitation contained in the NLRA or the three year time limitations applicable under Michigan state law is applied in this case, the plaintiff's §185 claim is time-barred; and his §1981 claim is absolutely time-barred under the three year statute of limitations which has been held to govern the timeliness of civil rights complaints. *Geromette v. General Motors Corp.*, 609 F.2d 1200, 1201 (6th Cir. 1979). The plaintiff was also required to exhaust his internal union remedies before asserting his claims under the Labor Management Reporting and Disclosure Procedure Act, 29 U.S.C. §401. See 29 U.S.C. §411(a)(4); *Stelling v. IBEW, Local 1547*, 587 F.2d 1379, 1389–1390 (9th Cir. 1978), *cert. denied*, 442 U.S. 944 (1979). Finally, the district court also reasonably and cautiously applied the doctrine of laches to bar plaintiff's Title VII claims in this case. The court properly considered unavailability of witnesses, changed personnel, and loss of pertinent records in its determination that the defendants would suffer undue prejudice if plaintiff were allowed to pursue his Title VII claims. *Abermarle Paper Co. v. Moody*, 422 U.S. 405 (1975); *EEOC v. Dresser Industries, Inc.*, 668 F.2d 1199 (11th Cir. 1982). The court also did not abuse its discretion in restricting plaintiff's discovery until after it could rule on the defendants' summary judgment motions. (Appendix E to the Petition for Writ of Certiorari).

Respondents Ford Motor Company and Frank Doyle were served with Petitioner's petition for writ of certiorari on March 9, 1984, which was rejected by the Clerk, and again on April 4, 1984. This later petition was accepted and docketed.

ARGUMENT

The petition for writ of certiorari should be denied because Petitioner failed to timely file his petition, the petition is defective in content, meets none of the criteria set forth in Supreme Court Rule 17, and does not invoke principles of law of public importance.

1. Petitioner has failed to timely file his petition.

The judgment of the Court of Appeals was entered on December 12, 1983. A petition for writ of certiorari must be filed within ninety (90) days of the judgment of the Court of Appeals. 28 U.S.C. §2101. The court received Petitioner's original petition on March 12, 1984, ninety-one (91) days after entry of the judgment of the Court of Appeals. Under Supreme Court Rule 28 to be timely, a pleading must be *received* by the clerk within the time prescribed for filing. Petitioner did not comply with the requirements of Rule 28 for filing by mail and therefore his petition is not timely.

2. The petition is defective in content and should therefore be denied.

The petition as served on Respondents fails to comply with Supreme Court Rule 21 in the following respects: (a) the questions presented for review are not expressed in the terms and circumstances of the case and include questions not raised in the court below; (2) there is no concise statement of the case containing facts material to the consideration of the questions presented; (3) the argument in favor of allowing the writ is neither direct or concise, nor does it raise any of the reasons or considerations under which this Court would exercise its discretion. Because Petitioner has failed "to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration", the petition should be denied under Supreme Court Rule 21.

3. Certiorari should not be granted to review matters neither raised in nor reviewed by the Court of Appeals.

The following questions presented for review in the Petition were not raised in the district court, were not a basis for Petitioner's appeal, and were consequently not reviewed by the Sixth Circuit.

> . . . was it "constructive contempt" by non-compliance with court's subpeona (sic), what is fair procedure?
>
> Is it "denial" of a meaningful opportunity to be heard to grant motion not in procedural compliance with rules and thereby effecting a substantial right VII Amendment to the United States Constitution?
>
> Was substantial justice rendered where affidavits were made in bad faith, no discovery or cross examination of parties making affidavits and Court asserting good faith of union?

This Court stated that in the absence of exceptional circumstances certiorari is not properly granted to review issues neither raised in nor considered by the court of appeals. *Adickes v. Kress & Co.*, 398 U.S. 144, 147 n. 2 (1970) and cases cited therein. *Cf. Lawn v. United States*, 355 U.S. 339, 362-63, n. 16 (1958). As a result, certiorari should be denied with respect to these questions.

4. Certiorari should not be granted to review cases not involving principles of public importance.

The questions presented in the petition for certiorari, while of substantial significance to petitioner, are not questions of paramount public importance. The Court has stated "that it is very important that we be consistent in not granting the writ

of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties. . . " *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923) (Taft, C.J.), *quoted in Rice v. Sioux City Mem. Park Cemetery*, 349 U.S. 70, 79 (1955).

The decision of the Sixth Circuit in affirming the district court's dismissal of Petitioner's Complaint, rested on well-established principles of law. To wit: that in order to state a claim under 42 U.S.C. §1983 one must allege and show that the act complained of was taken under color of state law, *Moose Lodge No. 7 v. Irvis*, 407 U.S. 163 (1972); that a §1985(3) claim of employment discrimination may only be considered under Title VII, *Great American Fed. S. & L. Assn. v. Novotny*, 442 U.S. 366 (1979); that claims under §1981 and §1985 are subject to appropriate state statute of limitations, *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 462 (1974); that claims under 29 U.S.C. §185 are governed by the six-month statute of limitations contained in the National Labor Relations Act, *DelCostello v. International Brotherhood of Teamsters*, ____ U.S. ____, 103 S.Ct. 2281 (1983); and that the jurisdictional prerequisite for filing suit under Title VII is the filing of a charge with EEOC, 42 U.S.C. §2000e(5); and that it is within the sound discretion of a trial court to stay discovery until critical preliminary issues, such as challenges to jurisdiction or questions of law regarding defenses, are decided. *See generally*, 8 Wright and Miller, Federal Practices and Procedure, Civil §2040 (1970).

Moreover, there is no conflict of opinion or authority among the courts of appeals requiring resolution by this Court. As a result, certiorari should be denied with respect to all Questions Presented.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

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